IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

Rajendra Kumar Tambi and ors.
Versus
Nagar Nigam Jaipur and anr.

S.B. CIVIL WRIT PETITION NO.1231/2000.

Date of Order : 6/4/2007.

PRESENT
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri R.S. Mehta for the petitioners.
Shri Shyam Arya for the respondents.

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Heard learned counsel for the parties.

This writ petition has been filed by the petitioners challenging the notification dated 25/3/2000 (Ann.10) whereby the respondents required the petitioners to remove the encroachment on the land in dispute within 24 hours.

Shri R.S. Mehta, learned counsel appearing for the petitioners contended that the respondents have wrongly declared

the petitioners as trespassers. They were put in possession on the basis of the lease granted by the Municipal Corporation Jaipur. He in this connection drew my attention to the first letter dated 12/11/1960 (Ann.1) addressed to the petitioner by the Revenue Officer of the Municipal Corporation Jaipur wherein it has been acknowledged that the petitioners were put in possession of the land by the Revenue Officer, Municipal Council, Jaipur. He also cited the receipts dated 24/10/1960 (Ann.2), 17/10/1962 (Ann.3) 12/3/1965 (Ann.4), 22/7/1965 (Ann.5) and 15/9/1966 (Ann.6) to impress upon that the petitioners were regularly paying the rent of the land therefore, they cannot be described as trespassers. He argued that in fact the respondents have themselves approved the plan for construction on the land in dispute copy of which has been placed on record as Annexure-7.

Learned counsel for the petitioners relying on the judgment of this court in **M/s.Chandra and Company Vs. State : 1981**

R.L.W. 19 argued that the respondents cannot be allowed to forcibly evict the petitioners without following due process of law. He therefore prayed that the impugned notice be quashed and set-aside and the respondents be directed not to interfere in the peaceful possession of the petitioners.

On the other hand, Shri Shyam Arya, learned counsel appearing for the respondents argued that there has been no deposit of rent beyond the year 1966 and that the land in dispute was given to the petitioners for storage of kerosene under Teh-Bazari System which has since been abolished by the Government. It was argued that petitioners had deposited the rent for the period of 10 years at one go with the J.D.A. uniliterally for the period from 1994 to 31/3/2003 on 31/3/1994 whereas the area in question falls within the control of Municipal Corporation, therefore deposit of the rent was intended to legalise possession of the petitioners which had otherwise become illegal.

According to him, on abolition of teh-bazari system, the petitioners have become trespassers on the land of the Municipal Council therefore, notices issued to them under Section 203 of the Rajasthan Municipality Act, 1959 was in due compliance of the principles of natural justice and the provisions of law on the subject.

Learned counsel for the petitioners referred to the reply dated 26/3/2000 (Ann.11) to the notice dated 25/3/2000 (Ann.10) and contended that the lease deed was duly executed in favour of the petitioners which is available in the records of the Municipal Council. In rebuttal, nowhere, the learned counsel for the respondents argued that in fact no lease deed was ever executed in favour of the petitioners and in fact the petitioners were trespassers over the land of the Municipal Council.

Having heard learned counsel for the parties and perused the materials available on record, I find that there are

numerous disputed questions of fact which cannot appropriately gone into in the remedy of writ petition. Nevertheless, the fact remains that the respondent-Council/Corporation has given a notice to the petitioners on 25/3/2000 and they have submitted reply to that notice vide reply dated 26/3/2000. It was contended in the reply that the lease deed was duly executed in favour of the petitioners which was available in the records of the Municipal Corporation. The Corporation being statutory body is expected to determine the status of the petitioners by providing them an opportunity of hearing before evicting them from the premises.

It is therefore directed that the petitioners shall submit whatever material they want to rely upon before the Chief Executive Officer Municipal Corporation Jaipur by 15th July 2007 who shall within thirty days thereafter after providing opportunity of hearing to the petitioners pass a reasoned and speaking order. In the event of the Municipal Corporation taking

a decision adverse to the interest of the petitioners, they shall be free to avail their remedy before the civil court in accordance with law.

With these observations, the writ petition is disposed of.

(MOHAMMAD RAFIQ), J.

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